

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

**THE TIRE DEPOT, INC.,
ROXANNE REUM, and
VERNON REUM**

Defendants.

Civil Action No. CV-07-50-M-DWM

COMPLAINT

The United States of America, by and through the undersigned attorneys, by authority of the Attorney General of the United States, and for and at the request of the Administrator of the United States Environmental Protection Agency (EPA), alleges as follows:

STATEMENT OF THE CASE

1. This is a civil action brought against defendants under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. § 9607, for the recovery of costs incurred by the United States in response to the release or threatened release of hazardous substances at and from the Pablo Tire Fire Site ("the Site") located in and near the town of Ronan, Montana.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action and the parties hereto, pursuant to Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(b), and 28 U.S.C. §§ 1331, 1345 and 1355.

3. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1395, and Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(b), because the releases or threatened releases of hazardous substances that gave rise to the claims in this action occurred in this district, and because the Site is located in this district.

DEFENDANTS

4. The Tire Depot, Inc., is a corporation organized under the laws of Montana, with its principal place of business in Montana.

5. Roxanne Reum is the Secretary and director of The Tire Depot, Inc., and is the deeded property title holder of the Site.

6. Vernon Reum is the President and director of The Tire Depot, Inc.

GENERAL FACTUAL ALLEGATIONS

7. The Pablo Tire Fire Site ("the Site") is located in Lake County, Montana, at 54380 Highway 93 South, Ronan, Montana. The Site is approximately five acres in size and lies one quarter mile from the Mud Creek/Mud Lake riverine system.

8. As of September 2001, Defendant Roxanne Reum was listed as the owner of the Site. Defendant Roxanne Reum has leased the Site to Defendant The Tire Depot, Inc. at all times relevant to this Complaint.

9. Among other activities at the Site, The Tire Depot, Inc. buys and sells new, used, and recapped automobile tires and vulcanizes, reinforces, rebuilds, and recycles automobile tires of all kinds.

10. As of September 2001, the Site included a three to five acre pit, which contained approximately five to six million tires.

11. On September 25, 2001 the tire pit at the Site caught fire due to an unknown cause.

12. On September 25, 2001, after being notified of the fire, EPA personnel were dispatched to the Site from Libby, Montana. Smoke from the fire was visible 50 miles away and pyrolytic oils were visibly oozing from the burning tires. EPA commenced a removal action at the Site. EPA and/or its contractors fought the fire with a smothering technique. Using heavy equipment, non-burning tires were segregated and burning tires consolidated. The burning tires were then covered with clay fill material trucked from a borrow pit approximately one mile away. During the fire EPA also conducted air monitoring. On September 27, 2001 the fire was deemed extinguished and all hands were demobilized from the scene.

13. EPA's monitoring revealed that various hazardous substances and pyrolytic oils were produced from the fire and were released to the air, soil, and water. The air samples obtained during the fire established the release to the air of aluminum, barium, calcium, copper, iron, magnesium, manganese, zinc, benzene and toluene.

14. Aluminum, barium, calcium, copper, iron, magnesium, manganese, zinc, benzene and toluene are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14). EPA regulations identify aluminum, barium, calcium, copper, iron,

magnesium, manganese, zinc, benzene and toluene as listed hazardous substances at 40 C.F.R. § 302.4(a) and Table 302.4.

15. Sections 104(a) and (b), and 107 of CERCLA, 42 U.S.C. §§ 9604(a) and (b), and 9607, authorize the President to take the necessary response action to determine the existence and extent of releases or threatened releases of hazardous substances, pollutants, or contaminants; to take action to remove or remedy such releases in order to protect public health and the environment; and to recover the costs of these actions. CERCLA further authorizes the President to expend monies to undertake planning, legal, economic, engineering, health, and other studies or investigations to plan and direct response actions, to recover the costs thereof, and to enforce the provisions of CERCLA. The President delegated his authority under Section 104(a) and (b) of CERCLA, 42 U.S.C. § 9604(a) and (b), to the Administrator of U.S. EPA. The Administrator of U.S. EPA redelegated this authority to the Regional Administrator of U.S. EPA for Region VIII, which was further redelegated to the Assistant Regional Administrators for Region VIII.

16. In an Action Memorandum, EPA determined that there had been a release or substantial threat of release of a hazardous substance at the Site, which presented an imminent and substantial endangerment to public health, welfare and the environment.

17. The United States has incurred response costs as a result of the performance of response actions necessary to address the releases or threatened releases of hazardous substances at and from the Site.

CLAIM FOR RELIEF

18. The allegations contained in paragraphs 1-17 are realleged and incorporated herein by reference.

19. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, inter alia, that the following persons shall be liable under CERCLA for the costs incurred by the United States in responding to releases or threatened releases of hazardous substances:

- (1) the owner and operator of a vessel or a facility,
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of, [and]
- (3) any person who by contract, agreement, or otherwise arranged for disposal . . . of hazardous substances owned or possessed by such person

20. The Pablo Tire Fire Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

21. Defendant The Tire Depot, Inc. is liable as an owner or operator of certain portions of the Pablo Tire Fire Site during the time hazardous substances were disposed of at or on those portions of the Site, within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), and as a current owner or operator of certain portions of the Pablo Tire Fire Site within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

22. Defendant Roxanne Reum is liable as an owner or operator of certain portions of the Pablo Tire Fire Site during the time hazardous substances were disposed of at or on those portions of the Site, within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), and as a current owner or operator of certain portions of the Pablo Tire Fire Site within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

23. Defendant Vernon Reum is liable as an owner or operator of certain portions of the Pablo Tire Fire Site during the time hazardous substances were disposed of at or on those portions of the Site, within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), and as a current owner or operator of certain portions of the Pablo Tire Fire Site within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

24. There have been "releases" or "threatened releases" of hazardous substances at or from the Site, within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

25. The actions taken by the United States in connection with the Site constitute "response" actions within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25). The United States has incurred costs in performing those response actions. Such costs include the costs of all activities taken at the Pablo Tire Fire Site pursuant to Section 104(b) and (e) of CERCLA, 42 U.S.C. § 9604(b) and (e), including but not limited to the costs of performance of the removal actions documented in the Action Memorandum; the cost of other investigation, monitoring, risk assessment, health assessment, engineering, construction, legal or other activities necessary or appropriate to plan, direct, and support response actions at the Site; together with prejudgment interest, as provided for by Section 107 of CERCLA, 42 U.S.C. § 9607. These costs also include enforcement costs incurred and to be incurred in connection with the United States' efforts to recover its response costs from liable parties.

26. Persons described in Section 107 of CERCLA are liable under that Section for "all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan [40 C.F.R. Part 300]." 42 U.S.C. § 9607(a)(4)(A).

27. The response actions taken by EPA and its contractors with respect to the Pablo Tire Fire Site and the costs incurred in connection with those response actions are not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

28. Pursuant to Sections 107(a) and 113(g)(2) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(g)(2), defendants The Tire Depot Inc., Roxanne Reum, and Vernon Reum are jointly and severally liable to the United States for all unreimbursed costs, including administrative, investigative, and enforcement costs, that the United States has incurred, is incurring, or will incur in connection with response actions relating to the Pablo Tire Fire Site.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, United States of America prays that this Court:

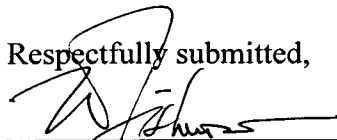
1. Enter judgment jointly and severally in favor of the United States and against The Tire Depot Inc., Vernon Reum, and Roxanne Reum for all response costs and health assessment costs the United States has incurred in connection with response actions relating to the Pablo Tire Fire Site, including prejudgment interest on those sums.

2. Award the United States its costs and expenses for this action; and

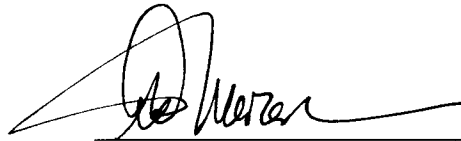
3. Grant such other and further relief as the Court deems just and proper.

DATED this 30th day of April, 2007.


Respectfully submitted,



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